

HOUSE No. 864

By Representative Smizik of Brookline and Senator Resor, joint petition of Frank I. Smizik and others to require producer responsibility for collection and recycling of discarded electronic products. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT RELATIVE TO RECYCLING DISCARDED ELECTRONIC PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting
2 after chapter 21M the following new chapter:—

3 **CHAPTER 21N.**
4 **RECYCLING ELECTRONIC PRODUCTS.**

5 Section 1. Definitions. For the purposes of this chapter the
6 following words shall have the following meanings:—

7 “Auditor” means a certified public accountant who conducts an
8 examination of records in accordance with generally accepted
9 accounting principles and auditing standards for the purpose of
10 expressing a qualified opinion thereon.

11 “Cathode ray tube” or “CRT” means a vacuum tube or picture
12 tube used to convert an electronic signal into a visual image.

13 “Collection system” means the system for the collection, pack-
14 aging, transportation, and recycling of products discarded by con-
15 sumers.

16 “Computer monitor” means a cathode ray tube or flat panel dis-
17 play primarily intended to display information from a central pro-
18 cessing unit (CPU), network, or the internet.

19 “Consolidation facility” means a facility where discarded elec-
20 tronic products are consolidated and temporarily stored while
21 awaiting shipment to a processor and includes a transport vehicle
22 owned or leased by a processor used to collect covered electronic
23 products at municipal collection sites in this state.

24 “Covered electronic product” means a cathode ray tube, a product
25 containing a cathode ray tube, a Liquid Crystal Display (LCD) or
26 other flat panel television or computer monitor, a computer central
27 processing unit that contains one or more circuit boards and includes
28 a desktop computer or a laptop computer, printers, scanners, and
29 card readers, but does not include an automobile, a household appli-
30 ance, a large piece of commercial, governmental or industrial equip-
31 ment, such as commercial medical equipment or governmental
32 security screening equipment, that contains a cathode ray tube, a
33 cathode ray tube product, a flat panel display or similar video dis-
34 play device that is contained within, and is not separate from, the

35 larger piece of equipment, or other medical products as that term is
36 defined under the Federal Food, Drug, and Cosmetic Act.

37 “Department” means the department of environmental protection.

38 “Environmentally sound recycling” means collection and recy-
39 cling that meets the standards established by the department.

40 “Municipal collection site” means a municipally owned solid
41 waste transfer station or recycling center, including a facility owned
42 by a consortium of municipalities or a facility that is under contract
43 with a municipality or consortium of municipalities to provide solid
44 waste management services.

45 “Orphan waste” means a covered electronic product, the producer
46 of which cannot be identified or is no longer in business and has no
47 successor in interest as determined by the department.

48 “Processor” means a person or company that collects and
49 processes covered electronic products for disposal, reuse and recy-
50 cling.

51 “Producer” means a person or company, irrespective of sales tech-
52 nique or channels used to sell their products, including mail order,
53 internet, or other means of distance communication, that manufac-
54 tures or manufactured, and sells or sold, covered electronic products
55 under its own brand; or resells or resold, under its own brand a cov-
56 ered electronic product produced by others; or manufactures or man-
57 ufactured, and sells or sold, covered electronic products without
58 affixing a brand. A reseller shall not be regarded as the producer of
59 the brand if the brand of the actual producer appears on the product.

60 “Recycling and dismantling facility” means a business that
61 processes covered electronic products for reuse and recycling.

62 “Recycling” means the use of materials contained in previously
63 manufactured goods as feedstock for new products, but not for
64 energy recovery or energy generation by means of combustion.

65 “Retailer” includes, but is not limited to, a business or an indi-
66 vidual or a producer of a covered electronic product that sells
67 directly to a consumer through any means, including, but not limited
68 to, transactions conducted through sales outlets, catalogs or the
69 internet, or any similar electronic means, but not including whole-
70 sale transactions with a distributor or other retailer.

71 “Return share” means a percentage of all covered electronic prod-
72 ucts collected calculated by return weight differentiated by producer;

73 each producer shall have the return share represented by the brands
74 it sells among the type of products it manufactures.

75 Section 2. Sales prohibition. As of January 1, 2009, the following
76 sales prohibitions shall apply to producers and retailers of covered
77 electronic products:—

78 (a) A producer not in compliance with this chapter is prohibited
79 from offering any product for sale in the commonwealth and shall
80 provide the necessary support to retailers to ensure the producer's
81 products are not offered for sale in the commonwealth.

82 (b) A retailer may not offer for sale in the commonwealth any
83 product of a producer not in compliance with sections this chapter.

84 (c) A producer may not offer for sale a covered electronic product
85 unless a visible, permanent label clearly identifying the producer of
86 that product is affixed to the product.

87 (d) Any person offering for sale in the commonwealth any
88 product of a producer not in compliance with this chapter shall be
89 subject to the penalties in section 11.

90 Section 3. Producer responsibility. Producers shall have the finan-
91 cial responsibility for the collection and recycling of their covered
92 electronic products which have been discarded in the common-
93 wealth, including their return share of orphan waste. Producers may
94 recycle their covered electronic products by establishing a recycling
95 program, either individually or in cooperation, to collect these prod-
96 ucts at their end of life as established in this section. Any such pro-
97 gram shall adhere to all applicable worker health and safety and
98 environmental laws, all sections of this chapter regarding recycling
99 and export, and all regulations regarding the recycling of covered
100 electronic products promulgated by the department. Producers shall
101 be financially responsible for their covered electronic products, as
102 well as their share of orphan products, through the program estab-
103 lished in this chapter.

104 (a) Municipalities are not required to participate in this program.

105 (1) Municipalities that choose not to participate in this program
106 are not entitled to any compensation provided for under this chapter.

107 (2) This program shall begin on January 1, 2008. Biennially,
108 municipalities that choose to participate in this program shall survey
109 and record the weight of all collected covered electronic products,
110 differentiated by producer, in the calendar year immediately pre-
111 ceding the year the report is due to the department. In the first year

112 of the program, participating municipalities shall survey and record
113 the weight of all collected covered electronic products, differentiated
114 by producer, for the calendar year 2008 and report to the department
115 in 2009.

116 (3) Municipalities may conduct this survey individually or in
117 cooperation with other municipalities, or through a third party.

118 (4) In the case of cooperative collection or use of a third party, all
119 cooperating parties shall ensure that each covered electronic product
120 is counted once, and only once.

121 (5) The municipality, or collective on behalf of the municipality,
122 shall report to the department the total weight collected, differenti-
123 ated by producer, by March 1 of the year immediately after the year
124 the municipality surveyed and recorded the weight of all collected
125 covered electronic products, differentiated by producer.

126 (b) Processors are not required to participate in this program.

127 (1) Processors that choose not to participate are not entitled to any
128 compensation provided for under this chapter.

129 (2) This program shall begin on January 1, 2008. Biennially,
130 processors that choose to participate in this program shall survey and
131 record the weight of all collected covered electronic products, differ-
132 entiated by producer in the calendar year immediately preceding the
133 year the report is due to the department. In the first year of the pro-
134 gram, participating processors shall survey and record the weight of
135 all collected covered electronic products, differentiated by producer,
136 for the calendar year 2008 and report to the department in 2009.

137 (3) The processor shall report to the department the total weight
138 collected differentiated by producer by March 1 of the year immedi-
139 ately after the year the processor surveyed and recorded the weight
140 of all collected covered electronic products, differentiated by pro-
141 ducer.

142 (4) Processors shall provide written documentation that all cov-
143 ered electronic products reported to the department were discarded
144 and collected in the commonwealth upon request by the department.

145 (5) No product brought into the commonwealth for the purpose of
146 discard shall be eligible for reimbursement under the provisions of
147 this chapter and shall be subject to penalties in section 11.

148 (6) Processors shall not report covered electronic products col-
149 lected from municipalities.

150 (7) Processors shall not charge a fee for collecting or recycling a
151 covered electronic product for which the processor receives compen-
152 sation under the provisions of this section.

153 (8) Receiving compensation under the provisions of this chapter
154 for a covered electronic product for which the processor knowingly
155 received a fee for the collection or recycling of that product shall be
156 considered a violation under this chapter.

157 (c) Biennially the department shall determine each producer's
158 return share of non-orphan covered electronic products.

159 (d) Biennially the department shall determine each producer's
160 return share of orphan waste. Each producers return share of orphan
161 waste shall be equivalent to their percentage of return share for non-
162 orphan covered electronic products.

163 (e) Each participating municipality or processor shall annually
164 report the amount of covered electronic products collected and recy-
165 cled, by weight, to the department.

166 (f) Annually the department shall determine the total number of
167 pounds of recycled covered electronic products in the common-
168 wealth.

169 (g) Annually, the department shall determine the amount, by
170 weight, of recycled covered electronic products that each producer is
171 responsible for, their return share based on orphan and non-orphan
172 products, and the total amount, by weight, of recycled covered elec-
173 tronic products in the commonwealth. The department shall inform
174 each producer, in writing by June 30, of the fees due under this
175 section.

176 (h) Producers shall remit to the department the cost of recycling
177 the amount, by weight, for which they are responsible, of covered
178 electronic products by August 30.

179 (1) This cost will be determined by applying a set per pound rate
180 for recycling covered electronic products.

181 (2) The department shall set this per pound rate, and shall adjust
182 this rate biennially, as necessary.

183 (3) The department shall consider the costs of collection, trans-
184 portation, recycling, and costs incurred by the administration of the
185 program established by this chapter in setting the rate.

186 (i) The department shall reimburse participating municipalities
187 and processors for their costs of recycling covered electronic prod-
188 ucts based on the set, per pound rate.

189 (j) The department shall maintain a separate account for all
190 monies collected from producers as established by this chapter. The
191 monies collected under the set per pound rate for the purpose of
192 reimbursement shall not be used for any other purpose.

193 (k) Any municipality or processor failing to meet the require-
194 ments of subsections (a), (b) and (e) shall not be eligible for any
195 reimbursements for recycling of covered electronic products.

196 (l) Municipalities shall make information available to its con-
197 stituents, that describes where and how to return, recycle, and dis-
198 pose of covered electronic devices.

199 (m) Municipalities and processors may choose to participate in
200 the program established by this section starting January 1 of any cal-
201 endar year beginning in 2007.

202 (n) Municipalities and processors who choose to participate in the
203 program established by this section shall do so for a minimum of
204 two consecutive years.

205 (o) No municipality or processor shall be eligible for reimburse-
206 ment under the provisions of this chapter until the processor or
207 municipality has completed a biennial sort.

208 Section 4. Auditing. Producers shall have the right to request an
209 independent audit of a municipality's or processor's annual reporting
210 or biennial sorting information.

211 (a) A producer shall be granted up to three audits annually, but no
212 more than six audits over a period of five years. The department may
213 grant additional audits to a producer if it determines there is just
214 cause.

215 (b) The municipality or processor and producer shall agree on an
216 independent auditor.

217 If the municipality or processor and the producer cannot reach
218 agreement on an auditor, the department shall assign one.

219 (c) If the auditor determines that the municipality or processor
220 willfully falsified their reporting or sorting information, then that
221 municipality or processor shall reimburse all producers, through the
222 department, all monies received under this chapter for the calendar
223 year audited. Any municipality or processor found willfully falsi-
224 fying reporting or sorting information in three separate years shall be
225 ineligible for reimbursement under this chapter.

226 (d) If the auditor determines that the municipality or processor did
227 not willfully falsify any reporting or sorting information, then the

228 producer who initiated the audit shall pay the full cost of the audit,
229 including any administrative costs incurred by the municipality or
230 processor as a result of the audit process, and shall pay a fine of five
231 hundred dollars to that municipality or processor. The auditor may
232 waive the fees and penalties if he determines that the municipality or
233 processor significantly mis-reported sorting or reporting informa-
234 tion, without willful intent.

235 Section 5. Producer Recycling Programs. Producers may establish
236 independent recycling programs either individually or in cooperation
237 with other producers, processors or municipalities.

238 (a) Municipalities or processors entering into cooperative agree-
239 ments with producers shall not count the products collected in coop-
240 eration with the producer in their annual collection totals or in their
241 biennial reporting.

242 (b) All individual or cooperative recycling programs must recover
243 all types, but not all brands, of covered electronic products and
244 adhere to all worker health and safety and environmental laws, all
245 sections of this chapter regarding recycling and export, and all regu-
246 lations regarding the recycling of covered electronic devices issued
247 by the department.

248 Section 6. Reporting. No later than January 1, 2009, and annually
249 thereafter, a producer that offers a covered electronic product for
250 sale in the commonwealth shall submit a producer report to the
251 department.

252 (a) The producer report shall include the following:

253 (1) A baseline or set of baselines that show the presence of mer-
254 cury, cadmium, lead, hexavalent chromium, PBDE's, and PBB's
255 used in covered electronic devices manufactured by the producer in
256 that year.

257 (2) A baseline or a set of baselines that describe any efforts to
258 design covered electronic products for recycling and goals and plans
259 for further increasing design for recycling.

260 (3) A description of any collection, consolidation and recycling
261 services utilized to recover the producer's products.

262 (b) The department may keep information submitted pursuant to
263 this section confidential as provided by section 10 of chapter 66 of
264 the General Laws.

265 (c) The department may recommend expanding the definition of
266 covered electronic products in this chapter to include keyboards,

267 mice, pointing devices, other computer peripherals, or any other
268 product the department deems hazardous to the public health.

269 Section 7. Environmentally sound recycling. Any person who
270 intends to export, or transfer for the purpose of export, covered elec-
271 tronic products outside the United States shall comply with all of the
272 following at least sixty days prior to export:—

273 (a) Notify the department of the destination, exporter, contents,
274 and volume of covered electronic waste to be exported.

275 (b) Demonstrate that the importation of covered electronic waste
276 is not prohibited by any applicable law or regulation of the country
277 of destination and that any import is conducted in accordance with
278 all applicable laws. As part of this demonstration, required import
279 and operating licenses, and notice acknowledging receipt of these
280 products from local authorities, shall be forwarded to the depart-
281 ment.

282 (c) Demonstrate that the exportation of covered electronic waste
283 is conducted only in accordance with applicable federal and interna-
284 tional law.

285 (d) Demonstrate that the management of the exported covered
286 electronic waste will be handled within the country of destination in
287 accordance with applicable rules, standards, and requirements of that
288 country.

289 (e) Demonstrate that the covered electronic waste is being
290 exported for the purpose of reuse or recycling.

291 The department shall make this information available upon
292 request.

293 Section 8. Labor Guidelines. All electronic waste recycling and
294 dismantling facilities shall protect the health and safety of their
295 workers and contractors by complying with all State and federal
296 occupational safety and health laws and regulations.

297 Section 9. State Agency Procurement. As of January 1, 2008, a
298 state agency that purchases or leases covered electronic devices shall
299 require each prospective bidder, certify that it, and its agents, sub-
300 sidiaries, partners, joint venturers, and subcontractors for the pro-
301 curement, have complied with this chapter and any regulations
302 adopted pursuant to this chapter, or to demonstrate that this chapter
303 is inapplicable to all lines of business engaged in by the bidder, its
304 agents, subsidiaries, partners, joint venturers, or subcontractors.

305 (a) Failure to provide certification, pursuant to this section shall
306 render the prospective bidder and its agents, subsidiaries, partners,
307 joint venturers, and subcontractors ineligible to bid on the procure-
308 ment of covered electronic devices.

309 (b) The bid solicitation documents shall specify that the prospec-
310 tive bidder is required to cooperate fully in providing reasonable
311 access to its records and documents that evidence compliance with
312 this chapter.

313 (c) Any person awarded a contract by a state agency that is found
314 to be in violation of this section is subject to the following sanctions:

315 (1) The contract shall be voided by the state agency to which the
316 equipment, materials, or supplies were provided.

317 (2) The contractor is ineligible to bid on any state contract for a
318 period of three years.

319 Section 10. Fees. The department shall assess an annual fee, pur-
320 suant to the provisions of section 18 of chapter 21A, which shall be
321 payable by the producers, and shall cover the full costs incurred by
322 the department for the preparation of regulations, for other related
323 compliance costs, and all other costs, including the annual costs of
324 administration, incurred for the implementation of this chapter.

325 Section 11. Penalties.

326 (a) Any person who willfully or knowingly violates this chapter
327 or regulations promulgated pursuant to this chapter is subject to judi-
328 cially imposed criminal and civil penalties, as well as civil adminis-
329 trative penalties.

330 (b) A violation may be punished by the administrative imposition
331 of a penalty of not less than one hundred dollars and not more than
332 five thousand dollars for each day of violation. A violation may be
333 punished by a fine of not more than twenty-five thousand dollars.
334 Punishment imposed under this chapter does not preclude any other
335 penalty prescribed by law.

1 SECTION 2. Regulations. The department of environmental pro-
2 tection is hereby authorized and directed to adopt rules, regulations,
3 procedures and standards as may be necessary for the implementa-
4 tion of chapter 21N.